

Title 22: HEALTH AND WELFARE
Chapter 252: LEAD POISONING CONTROL ACT

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Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 252: LEAD POISONING CONTROL ACT

§1314. SHORT TITLE

This Act may be cited as the Lead Poisoning Control Act. [1973, c. 367, (NEW).]

SECTION HISTORY

1973, c. 367, (NEW).

§1314-A. GOAL

The goal of the State in the area of lead poisoning is to eradicate childhood lead poisoning by the year 2010 through the elimination of potential sources of environmental lead. By January 1, 1997, the department shall submit a report to the joint standing committee of the Legislature having jurisdiction over human resource matters regarding progress made toward this goal. The report must include any recommendations the department may have to revise the goal, along with any necessary legislation. [1991, c. 810, §1 (NEW).]

SECTION HISTORY

1991, c. 810, §1 (NEW).

§1315. DEFINITIONS

As used in this Act, unless the context requires otherwise, the following words shall have the following meanings. [1973, c. 367, (NEW).]

1. Department.

[1991, c. 810, §2 (RP) .]

1-A. Child; children. "Child" or "children" means a person or persons up to 6 years of age.

[1991, c. 810, §3 (NEW) .]

1-B. Children's home.

[1995, c. 453, §1 (RP) .]

1-C. Child-occupied facility. "Child-occupied facility" means a building or portion of a building visited regularly for the purpose of child care by the same child, 6 years of age or under, on at least 2 days within any week if each day's visit lasts at least 3 hours, the combined weekly visit lasts at least 6 hours and the combined annual visit lasts at least 60 hours.

[1999, c. 276, §1 (NEW) .]

2. Dwelling. "Dwelling" means a structure, all or part of which is designed or used for human habitation, including a dwelling unit.

[1991, c. 810, §4 (AMD) .]

3. Dwelling unit. "Dwelling unit" means any room, group of rooms or other areas of a structure designed or used for human habitation.

[1973, c. 367, (NEW) .]

3-A. Environmental lead hazard. "Environmental lead hazard" means any condition that may cause exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated water or lead-based paint that is in poor condition.

[1999, c. 276, §2 (AMD) .]

3-B. Environmental lead inspection. "Environmental lead inspection" means a lead inspection as defined in rules of the Department of Environmental Protection in chapter 424, "Lead Management Regulations."

[1999, c. 276, §3 (AMD) .]

3-C. Environmental lead investigation. "Environmental lead investigation" means a detailed and extensive investigation to determine the potential cause of a confirmed case of lead poisoning in a child.

[1999, c. 276, §3 (AMD) .]

3-D. Interim controls. "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards and the establishment and operation of management and resident education programs.

[1997, c. 375, §1 (AMD) .]

4. Exposed surface.

[1991, c. 810, §6 (RP) .]

4-A. Health care provider.

[2011, c. 183, §1 (RP) .]

4-B. Lead abatement. "Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. "Lead abatement" includes, but is not limited to:

A. The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures and the removal or covering of lead-contaminated soil; and [1997, c. 375, §2 (NEW) .]

B. All preparation, cleanup and post-abatement clearance testing activities associated with such measures. [1997, c. 375, §2 (NEW) .]

"Lead abatement" does not include renovation and remodeling as defined in Title 38, section 1291, subsection 26.

For the purpose of this subsection, "permanently" means for at least 20 years.

[1997, c. 375, §2 (AMD) .]

4-C. Lead abatement contractor.

[1997, c. 375, §3 (RP) .]

4-D. Lead abatement design consultant.

[1997, c. 375, §3 (RP) .]

4-E. Lead abatement project supervisor.

[1997, c. 375, §3 (RP) .]

4-F. Lead abatement worker.

[1997, c. 375, §3 (RP) .]

4-G. Lead-based paint activities. "Lead-based paint activities" means inspection, risk assessment, lead abatement design, lead abatement and services related to lead-based paint such as interim controls, lead screening, lead determination and deleading.

[1997, c. 375, §4 (NEW) .]

5. Lead-based substance. "Lead-based substance" means any substance that contains lead at a level that constitutes or potentially constitutes an environmental lead hazard.

[1991, c. 810, §8 (RPR) .]

5-A. Lead-free. "Lead-free" means that a residential child-care facility or preschool facility, dwelling or premises contains no lead that is injurious or that could be injurious in the future.

[1995, c. 453, §4 (AMD) .]

5-B. Lead inspector. "Lead inspector" means a person licensed by the Department of Environmental Protection pursuant to Title 38, chapter 12-B to perform environmental lead inspections.

[1997, c. 375, §5 (AMD) .]

5-C. Lead poisoning. "Lead poisoning" means a confirmed elevated level of blood lead that is injurious, as defined in rules adopted by the department using intervention levels no higher than those set by the federal Centers for Disease Control.

[1995, c. 453, §5 (AMD) .]

5-D. Lead-safe. "Lead-safe" means that a residential child-care facility or preschool facility, dwelling or premises does not contain lead at a level or in a condition that constitutes an environmental lead hazard.

[1995, c. 453, §5 (AMD) .]

5-E. Occupant. "Occupant" means a person who resides in or uses regularly a dwelling, residential child-care facility or preschool facility.

[1995, c. 453, §5 (AMD) .]

5-F. Owner. "Owner" means any person who individually, jointly or in common with others:

A. [1995, c. 453, §5 (RP) .]

B. [1995, c. 453, §5 (RP) .]

C. Is the chief executive officer of the municipality, school administrative unit or state agency that controls the use of publicly owned property; [1995, c. 453, §5 (AMD) .]

D. Is a mortgagee who has taken actual possession in accordance with applicable law. A mortgagee who has not taken actual possession is not the owner; or [1995, c. 453, §5 (AMD).]

E. Is characterized by the following:

- (1) Has legal title to any dwelling or premises;
- (2) Has charge, care or control of any premises as owner or agent of the owner and has authority to expend money for compliance with the state sanitary code or as an executor, an administrator, a trustee or a guardian of the estate or the holder of legal title;
- (3) Is a real estate property manager or other entity that has the authority to fund capital or major property rehabilitation on the owner's behalf;
- (4) Is an estate or trust of which the premises is a part or the grantor or beneficiary of an estate or trust; or
- (5) Is the association of unit owners of a condominium or cooperative, which is considered as owner solely with respect to common areas and exterior surfaces and fixtures of that condominium or cooperative. [1995, c. 453, §5 (NEW).]

[1995, c. 453, §5 (AMD) .]

6. Person. "Person" means any individual, firm, corporation, association or partnership and the State and any political subdivision of the State.

[1991, c. 810, §10 (AMD) .]

6-A. Premises. "Premises" means a plotted lot or part of a plotted lot, an unplotted lot or a parcel of land, including developed and undeveloped land and any structure that exists on the land, if the lot, parcel or structure is used by children.

[1991, c. 810, §11 (NEW) .]

6-B. Preschool facility.

[1999, c. 276, §4 (RP) .]

6-C. Small preschool facility.

[1999, c. 276, §5 (RP) .]

6-D. Single-family residence. "Single-family residence" means a dwelling consisting of only one dwelling unit.

[1999, c. 276, §6 (NEW) .]

7. Sale or sell.

[1991, c. 810, §12 (RP) .]

7-A. State investigator. "State investigator" means a lead inspector who is employed or authorized by the department to conduct environmental lead investigations.

[1991, c. 810, §13 (NEW) .]

8. Toys.

[1991, c. 810, §14 (RP) .]

9. Lead poisoning.

[1991, c. 810, §15 (RP) .]

10. Commissioner.

[1991, c. 810, §16 (RP) .]

11. Child care facility.

[1991, c. 810, §17 (RP) .]

SECTION HISTORY

1973, c. 367, (NEW). 1975, c. 239, §1 (AMD). 1975, c. 293, §4 (AMD). 1991, c. 810, §§2-17 (AMD). 1995, c. 453, §§1-6 (AMD). 1997, c. 375, §§1-5 (AMD). 1997, c. 494, §3 (AMD). 1997, c. 494, §15 (AFF). 1999, c. 276, §§1-6 (AMD). 2011, c. 183, §1 (AMD).

§1315-A. AUTHORITY OF THE DEPARTMENT

The commissioner may take any action that is in accordance with the purposes of this chapter and is within the powers granted in this Title to protect the public from lead poisoning. That action may include, but is not limited to, the following: [1995, c. 453, §7 (AMD) .]

1. Reduction and abatement program. The establishment of programs to reduce lead-based substances and abate environmental lead hazards; and

[1991, c. 810, §18 (NEW) .]

2. Interagency agreements. The development of interagency agreements with any pertinent federal, state or local agency, including, but not limited to, public housing authorities, energy efficiency programs and home maintenance and improvement programs.

[1991, c. 810, §18 (NEW) .]

SECTION HISTORY

1991, c. 810, §18 (NEW). 1995, c. 453, §7 (AMD).

§1316. RESTRICTIONS ON USE OF LEAD-BASED SUBSTANCES

A person may not use or apply lead-based substances: [1991, c. 810, §19 (AMD) .]

1. Interiors. In or upon any exposed surface of a dwelling, residential child-care facility or preschool facility;

[1995, c. 453, §8 (AMD) .]

2. Fixtures. In or upon any fixtures or other objects used, installed or located in or upon any exposed surface of a dwelling, residential child-care facility or preschool facility or intended to be so used, installed or located; and

[1995, c. 453, §8 (AMD) .]

3. Toys and furniture. In and upon toys or household furniture.

[1973, c. 367, (NEW) .]

SECTION HISTORY

1973, c. 367, (NEW). 1975, c. 239, §2 (AMD). 1991, c. 810, §19 (AMD). 1995, c. 453, §8 (AMD).

§1316-A. RESTRICTIONS ON LEAD-CONTAINING CHILDREN'S PRODUCTS

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Child" means a person under 12 years of age. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

B. "Child care article" means a product designed or intended by the manufacturer to facilitate the sleep, relaxation or feeding of children or to help children with sucking or teething. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

C. "Children's jewelry" means jewelry that is made for, marketed for use by or marketed to a child and that is:

- (1) Represented by its packaging, display, distribution or advertising as appropriate for use by children;
- (2) Sold in conjunction with, attached to or packaged together with other products that are packaged, displayed or advertised as appropriate for use by children;
- (3) Sized for children and not intended for use by adults;
- (4) Sold in a vending machine; or
- (5) Sold in a retail store, catalog or website, or in a defined area of that store, catalog or website, in which a person exclusively offers for sale products that are packaged, displayed or advertised as appropriate for use by children. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

D. "Children's lunch box" means a fabricated container marketed or intended for use to carry food or drink for consumption by a child. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

E. "Children's product" means a product that is marketed for use by a child or the use of which by a child is foreseeable, including but not limited to a toy, child care article, children's lunch box or children's jewelry. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

F. "Lead-containing children's product" means a children's product that:

- (1) Contains lead in the aggregate, excluding lead in a paint or surface coating, at more than .009% of the total weight or is made with a product component containing lead at more than .009% of the total weight of the product component, except that if the product or product component lead level is preempted by federal law then the federal standard for lead level governs; or
- (2) Is coated with a paint or surface coating with a lead content that exceeds the Consumer Product Safety Commission safety rule as established in 16 Code of Federal Regulations, Part 1303, as amended. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

G. "Toy" means a product designed and made for the amusement of a child or for the child's use in play. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF).]

[2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

2. Restriction. Beginning July 1, 2009, a person may not manufacture, or knowingly sell, distribute or offer for sale or distribution, a lead-containing children's product except as provided in subsection 3.

[2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

3. Exception. The restrictions imposed in subsection 2 do not apply to consumer electronic products in which the lead-containing component is inaccessible to children, including but not limited to electronic toys, personal computers, audio and video equipment, calculators, wireless telephones, game consoles, hand-held electronic and electrical devices that incorporate a video screen used to access interactive software, and their related devices and products that comply with the provisions of directive 2002/95/EC of the European Union as adopted by the European Parliament and the Council of the European Union.

[2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

4. Enforcement. This section may be enforced in a civil action brought by the Attorney General under the Maine Unfair Trade Practices Act, except that the following provisions apply as penalties for violations of this section.

A. For the first violation by a manufacturer a warning must be given instead of an enforcement by the Attorney General if the employer has the equivalent of 25 or fewer full-time, year-round employees.

[2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

B. For all other violations the following provisions apply as penalties for violations of this section.

(1) For the first violation of this section, the penalty is not more than \$100 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$5,000.

(2) For a 2nd violation of this section, the penalty is not more than \$500 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$25,000.

(3) For a 3rd or subsequent violation of this section, the penalty is not more than \$1,000 per children's product manufactured, sold, distributed or offered for sale or distribution, with the total penalty not to exceed \$50,000.

(4) A penalty under this section may be waived by the court if it is determined that the person in good faith and with due diligence attempted to comply with the requirements of this section and promptly corrected after discovery any noncompliance with this section. [2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

[2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

5. Lead Poisoning Prevention Fund. Penalties collected under this section must be paid to the Lead Poisoning Prevention Fund established pursuant to section 1322-E.

[2007, c. 604, §1 (NEW); 2007, c. 604, §3 (AFF) .]

SECTION HISTORY

2007, c. 604, §1 (NEW). 2007, c. 604, §3 (AFF).

§1317. SALE OF LEAD BASE ARTICLES RESTRICTED **(REPEALED)**

SECTION HISTORY

1973, c. 367, (NEW). 1975, c. 239, §3 (AMD). 1991, c. 810, §20 (RP).

§1317-A. EARLY DIAGNOSIS PROGRAM

(REPEALED)

SECTION HISTORY

1975, c. 239, §4 (NEW). 1981, c. 470, §A63 (AMD). 1991, c. 810, §21 (RPR). 1999, c. 276, §7 (AMD). 2001, c. 683, §10 (AFF). 2001, c. 683, §1 (RP).

§1317-B. EDUCATIONAL AND PUBLICITY PROGRAM

The commissioner shall institute an educational and publicity program in order to inform the general public, health care providers and other appropriate groups of the dangers, frequency and sources of lead poisoning; the methods of preventing lead poisoning; and methods to abate lead-based substances and other environmental lead hazards from dwellings and premises. [1991, c. 810, §22 (AMD).]

SECTION HISTORY

1975, c. 239, §4 (NEW). 1989, c. 331, (AMD). 1991, c. 810, §22 (AMD).

§1317-C. SCREENING BY HEALTH CARE PROVIDERS

1. Screening. All health care providers shall advise parents of the availability and advisability of screening their children for lead poisoning. A health care program that receives funds from the State and has a child health component shall provide screening of children for lead poisoning in accordance with rules adopted by the department.

[2001, c. 683, §2 (AMD); 2001, c. 683, §10 (AFF) .]

2. Data. At least annually, the department shall analyze and summarize lead-screening information provided by health care providers, facilities and programs and provide the information to other state and local agencies involved in lead-poisoning issues. The information must also be provided to interested parties on request in a format that is easily understood by the general public.

[2007, c. 628, Pt. A, §1 (AMD) .]

3. Confidentiality. Unless otherwise authorized by section 42, subsection 5, the department may not release any information described in subsection 2 regarding the screening of children for lead poisoning or the source of any lead exposure if that information identifies children, families or other persons, directly or indirectly. The department may disclose information that relates to the address of a residential unit in which an environmental lead hazard or case of lead poisoning has been identified if the disclosure contains only the information necessary to advance the public health and does not directly identify an individual.

[2007, c. 628, Pt. A, §2 (NEW) .]

SECTION HISTORY

1991, c. 810, §23 (NEW). 2001, c. 683, §2 (AMD). 2001, c. 683, §10 (AFF). 2007, c. 628, Pt. A, §§1, 2 (AMD).

§1317-D. LEAD POISONING RISK ASSESSMENT AND BLOOD LEAD LEVEL TESTING PROGRAM

The commissioner shall establish a lead poisoning risk assessment and blood lead level testing program, referred to in this section as the "program," for assessment of lead poisoning risks to children and the testing of blood lead levels in children in accordance with this section and within the limits of available funding.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF).]

1. Lead poisoning risk assessment tool. The program must include a simplified lead poisoning risk assessment tool, developed by the department, based on questions from the United States Department of Health and Human Services, Centers for Disease Control and Prevention.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

2. Information. The program must include the distribution of information on lead poisoning risk assessment to providers for children.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

3. Testing of children covered by MaineCare program. As required by Section 1905(r)(5) of the Social Security Act and the federal Omnibus Budget Reconciliation Act of 1989, the program must require the testing of blood lead levels of all children covered by the MaineCare program at one year of age and 2 years of age. The drawing of blood for the testing may be done in the health care provider's office or may be referred to another laboratory.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

4. Testing of children not covered by MaineCare program. The program must require the testing of blood lead levels of all children not covered by the MaineCare program at one year of age and 2 years of age unless, in the professional judgment of the provider of primary health care, in conjunction with the use of the lead poisoning risk assessment tool, the child's level of risk does not warrant a blood lead level test. The drawing of blood for the testing may be done in the health care provider's office or may be referred to another laboratory.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

5. Inspections. The program must conduct comprehensive environmental lead inspections and technical assistance and give advice regarding the appropriate reduction of environmental lead hazards to families with children who have elevated levels of lead in their blood.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

6. Funding. As resources permit and in accordance with rules adopted by the department, pursuant to section 1323, the program must include payment by the department for blood lead level testing and related services and diagnostic evaluations when a child's parent is unable to pay and does not have health coverage for testing and services.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

7. Exception. This section does not apply to a child whose parent or guardian objects to that child's participation in the program on the grounds that the assessment or testing is contrary to the parent's or guardian's sincerely held religious or philosophical beliefs.

[2001, c. 683, §3 (NEW); 2001, c. 683, §10 (AFF) .]

SECTION HISTORY

2001, c. 683, §3 (NEW). 2001, c. 683, §10 (AFF).

§1318. WARNING ON LEAD BASE SUBSTANCE (*REPEALED*)

SECTION HISTORY

1973, c. 367, (NEW). 1991, c. 810, §24 (RP).

§1319. REPORT BY PHYSICIANS OF SUSPECTED LEAD POISONING **(REPEALED)**

SECTION HISTORY

1973, c. 367, (NEW). 1975, c. 239, §5 (AMD). 1991, c. 810, §25 (AMD).
1999, c. 276, §8 (RP).

§1319-A. LABORATORY TESTING **(REPEALED)**

SECTION HISTORY

1991, c. 810, §26 (NEW). 2001, c. 683, §4 (AMD). 2001, c. 683, §10
(AFF). 2011, c. 183, §2 (RP).

§1319-B. INSPECTION OF RESIDENTIAL CHILD-CARE FACILITIES AND PRESCHOOL FACILITIES **(REPEALED)**

SECTION HISTORY

1991, c. 810, §26 (NEW). 1995, c. 453, §9 (RPR). 1999, c. 276, §9 (RP).

§1319-C. SCREENING FOR POTENTIAL LEAD HAZARDS

1. Annual screening required. The department shall require a child care facility and the premises of a family child care provider as defined in chapter 1673 and a nursery school as defined in chapter 1675 to have an annual screening for potential lead hazards. If potential lead hazards are identified, a full lead inspection must be conducted.

[2005, c. 530, §2 (AMD) .]

1-A. Lead-safe status. A facility found to have lead hazards shall abate or remediate the hazards to at least a lead-safe status.

[2003, c. 421, §4 (NEW) .]

2. Exemptions. A facility may be exempt from subsection 1 if:

- A. The facility was constructed in 1978 or later; [1999, c. 276, §10 (NEW).]
- B. The facility has been certified as lead-safe within the previous 12 months; [1999, c. 276, §10 (NEW) .]
- C. The facility has been certified as lead-free; or [1999, c. 276, §10 (NEW).]
- D. The facility does not serve any children under 6 years of age. [1999, c. 276, §10 (NEW) .]

[2003, c. 421, §5 (AMD) .]

3. Approval dependent on compliance. As of July 1, 1998, a family child care provider, child care facility or nursery school may not be licensed, registered, certified or otherwise approved or receive any state funds unless it is in compliance with this section.

[2005, c. 530, §3 (AMD) .]

SECTION HISTORY

1999, c. 276, §10 (NEW). 2003, c. 421, §§3-5 (AMD). 2005, c. 530, §§2,3 (AMD).

§1319-D. LABORATORY TESTING

1. Laboratories. Except as provided in subsection 2, a blood sample taken from a child by a health care provider or laboratory to test for blood lead level must be sent to the Health and Environmental Testing Laboratory for analysis.

[2011, c. 183, §3 (NEW) .]

2. Facilities approved by the department. The department may approve the following facilities to test for blood lead level as long as the facility can perform in-office blood lead analyses for purposes of improving blood lead screening and the facility has demonstrated the ability to electronically submit all blood lead testing results and associated information to the department:

A. A Head Start facility; and [2011, c. 183, §3 (NEW) .]

B. A health care provider, health care facility or clinic that dispenses benefits of the Women, Infants and Children Special Supplemental Food Program of the federal Child Nutrition Act of 1966. [2011, c. 183, §3 (NEW) .]

[2011, c. 183, §3 (NEW) .]

3. Rules. The department shall adopt rules regarding blood lead testing conducted by:

A. The Health and Environmental Testing Laboratory; [2011, c. 183, §3 (NEW) .]

B. Health care providers, health care facilities and clinics that dispense benefits of the Women, Infants and Children Special Supplemental Food Program of the federal Child Nutrition Act of 1966; and [2011, c. 183, §3 (NEW) .]

C. Head Start facilities. [2011, c. 183, §3 (NEW) .]

[2011, c. 183, §3 (NEW) .]

4. Fees; dedicated account; uses. Whenever possible when a blood lead test is performed by the Health and Environmental Testing Laboratory, the laboratory shall bill 3rd-party payors for services provided under this section and shall deposit all fees received into the Health and Environmental Testing Laboratory dedicated account. The Health and Environmental Testing Laboratory shall use the funds to:

A. Administer a child blood and environmental lead testing program that includes processing, analyzing and reporting child blood lead samples and materials that may contain lead; and [2011, c. 183, §3 (NEW) .]

B. Gather data and report laboratory results. [2011, c. 183, §3 (NEW) .]

[2011, c. 183, §3 (NEW) .]

SECTION HISTORY

2011, c. 183, §3 (NEW).

§1320. INSPECTION OF DWELLING UNITS AND CHILD-OCCUPIED FACILITIES BY DEPARTMENT

Any authorized representative of the department, upon presenting the appropriate credentials to the owner or occupant, or a representative of either, may inspect any dwelling unit or child-occupied facility at reasonable times for the purpose of ascertaining the presence of lead-based substances, and may remove samples or objects necessary for laboratory analysis. Inspections may be made only when there are reasonable grounds to suspect that there are lead-based substances in or upon the exposed surfaces of any dwelling unit or child-occupied facility, or upon the request of either the owner or the occupant with whom children reside, or when a case of lead poisoning has been reported. [1999, c. 276, §11 (AMD).]

SECTION HISTORY

1973, c. 367, (NEW). 1975, c. 239, §6 (RPR). 1991, c. 810, §27 (AMD). 1999, c. 276, §11 (AMD).

§1320-A. INSPECTION OF DWELLINGS BY DEPARTMENT

Except in the case of an owner-occupied, single-family residence, the department shall within 30 days inspect all dwelling units in a dwelling when: [1999, c. 276, §12 (AMD).]

1. Lead poisoning found. A case of lead poisoning has been found in any dwelling unit within the dwelling; or

[1981, c. 470, Pt. A, §64 (AMD) .]

2. Lead-based substances. Lead-based substances have been found in any dwelling unit within the dwelling.

[1999, c. 276, §12 (AMD) .]

The department may, at its discretion, inspect an owner-occupied single-family residence whenever a lead-poisoned child has been identified as residing in or receiving care in that residence. [1999, c. 276, §12 (NEW).]

SECTION HISTORY

1975, c. 239, §7 (NEW). 1981, c. 470, §A64 (AMD). 1999, c. 276, §12 (AMD).

§1321. NOTICE AND REMOVAL

If the department determines that an environmental lead hazard exists in or on any dwelling, premises, residential child-occupied facility, child care facility, premises of a family child care provider or nursery school: [2005, c. 530, §4 (AMD).]

1. Notice posted. The department shall post in or upon the dwelling, premises, residential child-occupied facility, child care facility, premises of the family child care provider or nursery school, in a conspicuous place or places, notice of the existence of environmental lead hazard. Notice may not be removed until the department states that the environmental lead hazard no longer exists;

[2005, c. 530, §4 (AMD) .]

2. Notice to persons. The department shall give notice of the existence of the environmental lead hazard to all occupants;

[1991, c. 810, §28 (AMD) .]

3. Notice to owner; removal. The department shall give notice of the existence of the environmental lead hazard to the owner and order that the lead-based substances be removed, replaced or securely and permanently covered within 30 days of receipt of the notice. If the lead-based substances can not be removed, replaced or securely and permanently covered within 30 days, the department may grant an extension of reasonable time. All lead-based paint activities must be performed in accordance with rules adopted by the Department of Environmental Protection pursuant to Title 38, chapter 12-B. In the case of an owner-occupied, single-family residence, the department may provide technical assistance and guidance in lieu of enforcement activity at the department's discretion; and

[1999, c. 790, Pt. A, §23 (AMD) .]

4. Sale of dwelling, residential facility, child-occupied facility or nursery school. If, before the end of the 30-day period or extension, the owner sells the dwelling, premises, child care facility, premises of the family child care provider, residential child-occupied facility or nursery school, the owner shall notify the prospective buyer of the environmental lead hazard and the new owner must assume the responsibility of carrying out the requirements of this section within the specified time period.

[2005, c. 530, §4 (AMD) .]

5. Abatement procedures.

[1997, c. 375, §6 (RP) .]

6. Lead-based paint activities prohibition.

[1999, c. 276, §14 (RP) .]

SECTION HISTORY

1973, c. 367, (NEW). 1975, c. 239, §8 (RPR). 1981, c. 470, §A65 (AMD). 1991, c. 810, §28 (AMD). 1995, c. 453, §§10-12 (AMD). 1997, c. 375, §§6,7 (AMD). 1999, c. 276, §§13,14 (AMD). 1999, c. 790, §A23 (AMD). 2003, c. 421, §§6-8 (AMD). 2005, c. 530, §4 (AMD).

§1322. CHILD OCCUPANTS

A person may not knowingly rent a dwelling that has been posted and ordered cleared of harmful lead-based substances in accordance with section 1321. In circumstances where the presence of lead-based paint or building materials is unsuspected and becomes known when the dwelling is already rented to a family with children, the family of the children may not be evicted for that reason and the owner and occupant of the dwelling must be given written notice by the department advising of the existence of lead-based substances in the dwelling and ordering that within 30 days the lead-based substances be removed, replaced or securely and permanently covered. [1999, c. 276, §15 (AMD).]

Until the owner brings any residential dwelling or premises into compliance with this Act while a tenant is occupying a dwelling unit, the owner shall move the tenant to a substitute dwelling unit upon reasonable notice. The department may, on a case-by-case basis, waive this requirement if the department determines that the implementation of interim controls sufficiently protects the residents of the unit until full abatement is achieved. The owner shall pay reasonable moving expenses and any use and occupancy charges for a substitute dwelling unit that exceed the rent for the vacated dwelling unit for which the tenant remains responsible. "Substitute dwelling unit" means a dwelling unit of like or similar accommodation and in like or similar location that is lead-safe. If the tenant fails to accept the substitute dwelling unit selected by the owner while the owner is required to bring the vacated dwelling unit into compliance with this Act or the tenant fails to remain current in rent pursuant to the lease or tenancy at will under Title 14, section 6002, including the statutory period of right to cure, the owner is not obligated beyond 10 days after completion of

remediation to reimburse the tenant for any expense or inconvenience other than moving expenses and any use and occupancy charges for the substitute dwelling unit selected by the owner that exceed the rent for the vacated dwelling unit. [2003, c. 421, §9 (AMD).]

SECTION HISTORY

1973, c. 367, (NEW). 1975, c. 239, §9 (RPR). 1975, c. 293, §4 (AMD). 1991, c. 810, §29 (AMD). 1995, c. 453, §13 (AMD). 1999, c. 276, §15 (AMD). 2003, c. 421, §9 (AMD).

§1322-A. LICENSURE OF LEAD INSPECTORS AND LEAD ABATEMENT PERSONNEL

(REPEALED)

SECTION HISTORY

1991, c. 810, §30 (NEW). 1995, c. 453, §14 (AMD). 1997, c. 375, §8 (RP).

§1322-B. TRAINING PROGRAM CERTIFICATION

(REPEALED)

SECTION HISTORY

1991, c. 810, §30 (NEW). 1997, c. 375, §9 (RP).

§1322-C. LABORATORY CERTIFICATION

By July 1, 1993, the department shall adopt rules regarding the analysis of lead in environmental media, including, but not limited to, air, dust, soil, paint, pewter, pottery and water and shall establish a program to certify laboratories that perform lead analysis to ensure that those laboratories comply with the rules adopted under this section. [1991, c. 810, §30 (NEW).]

SECTION HISTORY

1991, c. 810, §30 (NEW).

§1322-D. REPORTS AND RECORDS

(REPEALED)

SECTION HISTORY

1991, c. 810, §30 (NEW). 1999, c. 276, §16 (RP).

§1322-E. LEAD POISONING PREVENTION FUND

1. Fund established. The Lead Poisoning Prevention Fund, referred to in this section as "the fund," is established within the department as a nonlapsing fund for the purposes specified in this section.

[2005, c. 403, §1 (NEW) .]

2. Sources of fund. The fund is funded from all fees collected under section 1322-F and from other funds accepted by the commissioner or allocated or appropriated by the Legislature.

[2005, c. 403, §1 (NEW) .]

3. Prevention purposes. Allocations from the fund must be made for the following purposes:

- A. Contracts for funding community and worker educational outreach programs to enable the public to identify lead hazards and take precautionary actions to prevent exposure to lead; [2005, c. 403, §1 (NEW).]
- B. An ongoing major media campaign to fulfill the purposes of the educational and publicity program required by section 1317-B; [2005, c. 403, §1 (NEW).]
- C. Measures to prevent children's exposure to lead, including targeted educational mailings to families with children that occupy dwellings built prior to 1978 with culturally appropriate information on the health hazards of lead, the identification of lead sources, actions to take to prevent lead exposure and the importance of screening children for lead poisoning; [2005, c. 403, §1 (NEW).]
- D. Measures to prevent occupational exposures to lead for private and public employees, including improvements in the effectiveness of the occupational disease reporting system required in chapter 259-A in identifying and educating health care providers, employers and lead-exposed adults about occupational lead poisoning prevention strategies; [2005, c. 403, §1 (NEW).]
- E. Funding an assessment of current uses of lead and the availability, effectiveness and affordability of lead-free alternatives; [2007, c. 628, Pt. A, §3 (AMD).]
- F. Funding for educational programs and information for owners of rental property used for residential purposes; and [2007, c. 628, Pt. A, §4 (AMD).]
- G. Implementation of the lead-safe housing registry by the Department of Environmental Protection pursuant to Title 38, chapter 12-B and achieving the goal of elimination of childhood lead poisoning risks in the State. [2007, c. 628, Pt. A, §5 (NEW).]

[2007, c. 628, Pt. A, §§3-5 (AMD).]

4. Administration. The Bureau of Health shall administer the fund allocations with the review and advice of an advisory board established by the department pursuant to section 1323. Preference must be given to programs that reach high-risk or underserved populations. The bureau may contract for professional services to carry out the purposes of this section.

[2005, c. 403, §1 (NEW).]

SECTION HISTORY

2005, c. 403, §1 (NEW). 2007, c. 628, Pt. A, §§3-5 (AMD).

§1322-F. LEAD POISONING PREVENTION FEE

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL CONTINGENCY: See T. 22, §1322-F, sub-§4)

1. Fee imposed. Beginning July 1, 2006, a fee is imposed on manufacturers or wholesalers of paint sold in the State to support the Lead Poisoning Prevention Fund under section 1322-E. The fee must be imposed at the manufacturer or wholesaler level, in the amount of 25¢ per gallon of paint estimated to have been sold in the State during the prior year, as determined by rule adopted by the department.

[2005, c. 403, §1 (NEW).]

2. Rules. By July 1, 2006, the department shall adopt rules to implement this section, including rules to determine which manufacturers or wholesalers of paint sold in the State are responsible for the fees imposed under subsection 1 and rules establishing the estimated number of gallons of paint sold in the State in the prior year for each manufacturer and rules determining the manner of payment. The rules must provide for waivers of payment for manufacturers and wholesalers of paint that is sold in low quantities in the State. The costs for development of these rules and for administration of the Lead Poisoning Prevention Fund must be reimbursed

from the fees collected. The rules must specify that the first payment of fees is due by April 1, 2007. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 403, §1 (NEW) .]

3. Enforcement. The Attorney General shall enforce payment of fees under this section through an action in Superior Court in Kennebec County and may collect costs and attorney's fees.

[2005, c. 403, §1 (NEW) .]

4. Contingent repeal. This section is repealed when the Commissioner of Health and Human Services certifies that a period of 24 months has elapsed since the Department of Health and Human Services identified a child with an elevated blood lead level through screening by health care providers under section 1317-C. The Commissioner of Health and Human Services shall provide notice to the Secretary of the Senate, the Clerk of the House of Representatives and the Office of the Revisor of Statutes when this condition has been met. For purposes of this subsection, "elevated blood lead level" means a confirmed level of blood lead of 10 micrograms per deciliter or a level of blood lead defined by the federal Department of Health and Human Services, Centers for Disease Control and Prevention, whichever is lower.

[2007, c. 628, Pt. A, §6 (AMD) .]

SECTION HISTORY

2005, c. 403, §1 (NEW). 2007, c. 628, Pt. A, §6 (AMD).

§1323. RULES

The department shall adopt rules to carry out the purposes of this chapter and to ensure that state law relating to lead poisoning satisfies minimum requirements of federal law in all respects. The rules may address, but are not limited to, the following: [1995, c. 453, §15 (AMD) .]

1. Lead-based substances. Prohibiting the sale or use of lead-based substances;

[1991, c. 810, §31 (NEW) .]

2. Screening. Screening children for lead poisoning;

[1991, c. 810, §31 (NEW) .]

3. Inspections; tests; abatement.

[1997, c. 375, §10 (RP) .]

3-A. Department inspections. Performing inspections of residential child-care facilities, preschool facilities and other dwellings for the purpose of determining the existence of environmental lead hazards;

[1997, c. 375, §11 (NEW) .]

4. Training programs.

[1997, c. 375, §12 (RP) .]

5. Licenses.

[1997, c. 375, §12 (RP) .]

6. Laboratory certification. Certifying laboratories to conduct analysis of lead-based substances;

[1991, c. 810, §31 (NEW) .]

7. Notice. Notifying owners and occupants of environmental lead hazards and posting lead hazard warnings;

[1991, c. 810, §31 (NEW) .]

8. Records. Keeping records of lead poisoning investigations;

[1991, c. 810, §31 (NEW) .]

9. Fees. Establishing fees for services performed under this chapter;

[2001, c. 683, §5 (AMD); 2001, c. 683, §10 (AFF) .]

10. Advisory boards. Establishing boards or commissions to advise the department regarding lead poisoning; and

[2001, c. 683, §5 (AMD); 2001, c. 683, §10 (AFF) .]

11. Risk assessment and testing. Developing the lead poisoning risk assessment tool and the requirements for its administration and testing for blood lead levels, pursuant to section 1317-D.

[2001, c. 683, §6 (NEW); 2001, c. 683, §10 (AFF) .]

SECTION HISTORY

1973, c. 367, (NEW). 1975, c. 239, §10 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 694, §336 (RPR). 1991, c. 810, §31 (AMD). 1995, c. 453, §§15,16 (AMD). 1997, c. 375, §§10-12 (AMD). 2001, c. 683, §§5,6 (AMD). 2001, c. 683, §10 (AFF).

§1324. NO IMPAIRMENT TO CIVIL DAMAGES; LOCAL ORDINANCES

Nothing in this chapter shall be interpreted or applied in any manner to defeat or impair the right of any person, entity, municipality or other political subdivision to maintain an action or suit for damages sustained or equitable relief or for violation of an ordinance by reason of or in connection with any violation of this chapter. [1973, c. 367, (NEW).]

This chapter shall not prevent any municipality or other political subdivision from enacting any enforcing ordinances which establish a system of lead poisoning control that provide the same or higher standards than those provided in this chapter. [1973, c. 367, (NEW) .]

SECTION HISTORY

1973, c. 367, (NEW).

§1324-A. LIABILITY OF OWNERS; DAMAGES

(REPEALED)

SECTION HISTORY

1975, c. 239, §11 (NEW). 1991, c. 810, §32 (AMD). 1995, c. 453, §17 (RPR). 1995, c. 572, §1 (AMD). 1997, c. 375, §13 (AMD). MRSA T. 22, §1324-A, sub-§4 (RP).

§1325. VIOLATION

In addition to any other penalty imposed under this chapter, any person who violates any section of this chapter may be punished for each violation by a fine of not more than \$500 or by imprisonment for not more than 6 months, or by both. Violations existing within individual dwelling units are considered separate violations. This section does not limit the authority of the Department of Environmental Protection to seek penalties for violations under the authority of Title 38, section 349. [1999, c. 276, §17 (AMD).]

SECTION HISTORY

1973, c. 367, (NEW). 1975, c. 239, §12 (AMD). 1991, c. 810, §33 (AMD). 1999, c. 276, §17 (AMD).

§1326. INJUNCTION REQUIRING REMOVAL

If the lead-based substance remains an environmental lead hazard at the expiration of 30 days or at the expiration of an extension given by the commissioner pursuant to section 1321, the State, in addition to any other remedies it has, may seek a mandatory injunction ordering the environmental lead hazard removed by a suitable 3rd party at the expense of the owner of the dwelling, premises, residential child-occupied facility, child care facility, premises of the family child care provider or nursery school. [2005, c. 530, §5 (AMD).]

SECTION HISTORY

1975, c. 239, §13 (NEW). 1991, c. 810, §34 (AMD). 1995, c. 453, §18 (AMD). 2003, c. 421, §10 (AMD). 2005, c. 530, §5 (AMD).

§1327. ESSENTIAL MAINTENANCE PRACTICES

Notwithstanding any other provision of law, an owner of a building constructed prior to 1978 that is rented for residential purposes or used as a preschool facility may perform essential maintenance practices as defined under rules of the Department of Environmental Protection, chapter 424, "Lead Management Regulations." [1999, c. 276, §18 (AMD).]

1. Precautions.

[1999, c. 276, §18 (RP) .]

2. Checks.

[1999, c. 276, §18 (RP) .]

3. Removes or stabilizes paint.

[1999, c. 276, §18 (RP) .]

4. Repairs.

[1999, c. 276, §18 (RP) .]

5. Provides information.

[1999, c. 276, §18 (RP) .]

SECTION HISTORY

1995, c. 453, §19 (NEW). 1999, c. 276, §18 (AMD).

§1328. RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT FORMS (REPEALED)

SECTION HISTORY

2005, c. 339, §2 (NEW). 2011, c. 96, §4 (RP).

§1329. LEAD POISONING WARNING STATEMENT

1. Display of poster; availability of brochure. A retailer, store or commercial establishment that offers paint or other supplies intended for the removal of paint shall display a poster in a prominent and easily visible location and make available to its customers brochures containing statements that the dry sanding or scraping of paint in dwellings built before 1978 is dangerous and that the improper removal of old paint is a significant source of lead dust and the primary cause of lead poisoning. The poster and brochure must also inform consumers about where they may obtain more information on lead poisoning and paint removal.

[2007, c. 628, Pt. A, §7 (NEW) .]

2. Posters and brochures. The department shall produce posters and brochures to meet the requirements of subsection 1 and shall provide paper copies of the posters and brochures to retailers, stores and commercial establishments and post copies for downloading on the department's website. A retailer, store or commercial establishment may display posters and provide brochures that differ from those provided by the department if the posters and brochures provide the information required under subsection 1.

[2007, c. 628, Pt. A, §7 (NEW) .]

SECTION HISTORY

2007, c. 628, Pt. A, §7 (NEW).

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